

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**ALLEN L. McMURRAY, on behalf)
of himself and all other similarly)
situated,)**

Plaintiff(s),)

v.)

FORMEL D,)

Defendant.)

CIVIL ACTION NO.:

2:19-CV-00548-AMM

**DEFENDANT'S SUBMISSION REGARDING PLAINTIFFS'
RENEWED MOTION TO APPROVE SETTLEMENT AGREEMENT**

COMES NOW Defendant, Formel D, and in relation to Plaintiffs' Renewed Motion to Approve Settlement Agreement (Doc. 208), respectfully submits the following:

(1) In the Settlement Agreement and Release, Section Seven addresses a potential service award to Allen McMurray ("McMurray"). If such an award is approved by the Court, McMurray agreed to execute a separate release agreement including, *inter alia*, a no-rehire and confidentiality provision. As part of that separate release agreement, Formel D agreed that it would not oppose McMurray's request for a Service Award.

(2) If the Court denies McMurray's request for a Service Award, Formel D does not oppose Plaintiffs' request to strike the no-rehire and confidentiality provision from the separate release agreement.

(3) If the Court approves McMurray's request for a Service Award, Formel D opposes Plaintiffs' request to strike the no-rehire and confidentiality provision from the separate release agreement. Because the Service Award constitutes additional consideration for McMurray, the additional provisions that go beyond the release of the FLSA claim can be approved. *Scherr v. Cooper Rests, Inc.*, 2018 WL 2978046, *3 (S.D. Ala. 2018) (citing *Smith v. Aramark Corp.*, 2014 WL 5690488 , at *4 (M.D. Fla. Nov. 4, 2014)(approving settlement agreement where Plaintiffs received separate consideration in exchange for a general release and waiver, ADEA waiver, confidentiality clause, and non-disparagement agreement); *Caamal v. Shelter Mortg. Co., L.L.C.*, 2013 WL 5421955 , at *4 (M.D. Fla. Sept. 26, 2013)(approving settlement agreement where Plaintiff received \$500.00, a mutual release of claims, and an agreement to provide a neutral reference in exchange for a general release of claims, non-disparagement agreement, and waiver of future employment); *Bright v. Mental Health Resource Center, Inc.*, 2012 WL 868804, at *5 (M.D. Fla. Mar. 14, 2012)(approving the settlement agreement as to one employee who signed a general release in exchange for the employer foregoing its counterclaims against her) (other citations omitted).

(4) In Section VI of Doc. 208, Plaintiffs reference “Defendant’s YEARFRAC computer program.” YEARFRAC is a Microsoft Excel formula; it is not a computing program belonging to Formel D.

(5) The Settlement Agreement and Release executed by Formel D is attached.

Respectfully Submitted,

s/ Josh C. Harrison

Josh C. Harrison (ASB-3775-O76H)

Ogletree, Deakins, Nash,

Smoak & Stewart, P.C.

420 20th Street North, Suite 1900

Birmingham, AL 35203-3212

Telephone: (205) 328-1900

Facsimile: (205) 328-6000

josh.harrison@ogletreedeakins.com

Thomas A. Bright (pro hac vice)

Ogletree, Deakins, Nash,

Smoak & Stewart, P.C.

300 North Main Street, Suite 500

Greenville, SC 29601

Telephone: (864) 271-1300

Facsimile: (864) 235-8806

thomas.bright@ogletreedeakins.com

Stephen E. Giles (pro hac vice)
Employers Law SC, LLC
47 Green Street
P.O. Box 1094
Simpsonville, SC 29681
Telephone: (864) 918-2614
steve.giles@employerslawsc.com

Attorneys for Defendant Formel D

CERTIFICATE OF SERVICE

This is to certify that on this the 28th day of September, 2022, I electronically transmitted the foregoing using the ECF system of filing, which will transmit a Notice of Electronic Filing to the following counsel for Plaintiff:

Lee David Winston
WINSTON COOKS, LLC
505 20th Street North, Suite 815
Birmingham, AL 35203
205-502-0940
Fax: 205-278-5876
lwinston@winstoncooks.com

Roderick T Cooks
WINSTON COOKS, LLC
Two 20th Street North, Suite 1330
Birmingham, AL 35203
205-502-0970
Fax: 205-278-5876
rcooks@winstoncooks.com

Charity Gilchrist-Davis
LAW OFFICE OF GILCHRIST-DAVIS LLC
The TLC Financial Center
505 20th Street North, Suite 815
Birmingham, AL 35203
cgdavis@gilchristdavis.com

s/ Josh C. Harrison
Of Counsel